



Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, MAY 12, 2006
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AT
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TDD (202) 514-1888

JUSTICE DEPARTMENT REQUESTS EXTENSION OF MICROSOFT FINAL JUDGMENT

Microsoft Agrees to Two-Year Extension, Subject to Court Approval

WASHINGTON — The Department of Justice told the U.S. District Court for the District of Columbia today that it is necessary to extend the term of certain portions of the Microsoft final judgment by at least two years. The Department said that an extension is necessary due to Microsoft's difficulty in improving the technical documentation it provides to licensees.

The Department's Antitrust Division made its views known today as part of its Joint Status Report to Judge Colleen Kollar-Kotelly of the U.S. District Court for the District of Columbia. Today's status report is the sixth of the six-month reports requested by the court. The Antitrust Division enforces the final judgment in conjunction with antitrust enforcers from 17 states and the District of Columbia, which along with Microsoft joined in today's filing with the court.

The original final judgment is set to expire in Fall 2007. If the extension is approved by the court, the final judgment would expire in Fall 2009.

Microsoft has agreed to a two-year extension of the communications protocol licensing program contained in Section III.E of the final judgment, along with all of the final judgment's enforcement provisions. Microsoft has also agreed that the Department and state antitrust

enforcement agencies may, at their discretion, apply to the court in Fall 2009 for an additional extension of all or part of the extended provisions of the final judgment for a period of up to three additional years, through November 2012.

“The Department of Justice is committed to full and vigorous enforcement of the Microsoft final judgment,” said J. Bruce McDonald, Deputy Assistant Attorney General in the Department’s Antitrust Division. “This extension will ensure that companies interested in licensing the communications protocols receive the benefit of complete and accurate documentation for the full period of time provided by the court’s final judgment.”

Section III.E of the final judgment requires that Microsoft make available to competing server software developers, on reasonable and non-discriminatory terms, certain technology used by Microsoft to make its server operating systems interoperate with client PCs running the Windows operating system. Microsoft must provide licensees with technical documentation that is designed to enable them to use this technology in their own server products so that those products work better with Windows.

In past status reports, the Department reported to the court its concerns with the quality of the technical documentation Microsoft provides to licensees under this program and with the length of time it is taking Microsoft to improve that documentation.

After reviewing its progress in improving the technical documentation, Microsoft concluded that a broader “reset” of its efforts to improve the technical documentation would be more effective and efficient than continuing with the current approach. The government concurs, and therefore Microsoft will rewrite significant portions of the documentation in an effort to substantially improve the overall quality of the documentation. As this project will take time to complete, and since the final judgment otherwise would expire in Fall 2007, the Department informed Microsoft that it would be necessary to request an extension of the term of

the final judgment from the court. The Department said in its filing that the request for an extension is not a result of any belief that Microsoft has willfully violated the final judgment.

Microsoft has also agreed that even if the court does not extend the relevant portions of the final judgment beyond November 2009, Microsoft will continue, through Nov. 11, 2012, to make the interoperability technology covered by the final judgment available for license on reasonable and non-discriminatory terms, with a minimum five year term. As a result, industry members signing licenses in 2012 would have the ability to use the licensed technology at least through Nov. 11, 2017.

Since the final judgment was entered, the Department has updated the court regularly on the results of its efforts to ensure Microsoft's compliance with the final judgment. The Department has reported continuous improvements in the way that the Windows operating system handles middleware products developed and distributed by companies other than Microsoft, including the development and availability of clear instructions to software developers for how to take advantage of the default capabilities, as provided for by Section III.H of the final judgment. Similarly, the Department has reported that computer hardware manufacturers now are better able to take advantage of the opportunities the final judgment gives them to negotiate freely with third-party middleware providers for promotion of their products. For example, Hewlett-Packard's announcement that it would ship computers that carry the latest version of the Netscape browser as an optional default was made possible under Section III.H of the final judgment. These accomplishments have been of particular importance given that the conduct that gave rise to the Department's 1999 lawsuit against Microsoft included Microsoft's efforts to keep the Netscape browser off of the Windows desktop.

It is the Department's goal to make the technical documentation being developed by Microsoft under the final judgment in the U.S. and under the licensing program provided for by

the decision of the European Commission as consistent as possible. The Department will continue to work to ensure that the approaches to antitrust enforcement against Microsoft in the U.S. and elsewhere reflect sound competition policy.

The Department will submit the necessary papers to the court for its consideration promptly.

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